

**FILED**

**DEC 12 2012**

**Board of Vocational Nursing  
and Psychiatric Technicians**

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9 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2008-165

13 **TODD JAMES SCHEI**  
10333 Princess Marci Drive  
14 Santee, CA 92071

**A C C U S A T I O N**

15 **Vocational Nurse License No. VN 213354**

16 Respondent.  
17

18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in  
21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric  
22 Technicians, Department of Consumer Affairs.

23 2. On or about February 8, 2005, the Board of Vocational Nursing and Psychiatric  
24 Technicians issued Vocational Nurse License Number VN 213354 to Todd James Schei  
25 (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to  
26 the charges brought herein and will expire on July 31, 2014, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order  
2 to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"  
4 and "registration."

5 9. Section 2878 of the Code states:

6 The Board may suspend or revoke a license issued under this chapter [the  
7 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the  
following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the  
9 following:

10 . . . .

11 (f) Conviction of a crime substantially related to the qualifications, functions,  
12 and duties of a licensed vocational nurse, in which event the record of the conviction  
shall be conclusive evidence of the conviction.

13 . . . .

14 10. Section 2878.5 of the Code states:

15 In addition to other acts constituting unprofessional conduct within the meaning  
16 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for  
a person licensed under this chapter to do any of the following:

17 . . . .

18 (b) Use any controlled substance as defined in Division 10 of the Health and  
19 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic  
beverages, to an extent or in a manner dangerous or injurious to himself or herself,  
20 any other person, or the public, or to the extent that the use impairs his or her ability  
to conduct with safety to the public the practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving possession of any narcotic or  
22 dangerous drug, or the prescription, consumption, or self-administration of any of the  
substances described in subdivisions (a) and (b) of this section, in which event the  
23 record of the conviction is conclusive evidence thereof.

24 . . . .

25 11. Section 2878.6 of the Code states:

26 A plea or verdict of guilty or a conviction following a plea of nolo contendere  
27 made to a charge substantially related to the qualifications, functions and duties of a  
licensed vocational nurse is deemed to be a conviction within the meaning of this  
28 article. The board may order the license suspended or revoked, or may decline to  
issue a license, when the time for appeal has elapsed, or the judgment of conviction

1 has been affirmed on appeal or when an order granting probation is made suspending  
2 the imposition of sentence, irrespective of a subsequent order under the provisions of  
3 Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty  
and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing  
the accusation, information or indictment.

#### 4 REGULATORY PROVISIONS

5 12. California Code of Regulations, title 16, section 2521, states:

6 For the purposes of denial, suspension, or revocation of a license pursuant to  
7 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
8 crime or act shall be considered to be substantially related to the qualifications,  
9 functions or duties of a licensed vocational nurse if to a substantial degree it  
10 evidences present or potential unfitness of a licensed vocational nurse to perform the  
11 functions authorized by his license in a manner consistent with the public health,  
12 safety, or welfare. Such crimes or acts shall include but not be limited to those  
13 involving the following:

14 (a) Procuring a license by fraud, misrepresentation, or mistake.

15 (b) A conviction of practicing medicine without a license in violation of  
16 Chapter 5 of Division 2 of the Business and Professions Code.

17 (c) Violating or attempting to violate, directly or indirectly, or assisting in or  
18 abetting the violation of, or conspiring to violate any provision or term of Chapter  
19 6.5, Division 2 of the Business and Professions Code.

20 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,  
21 whether a licensed physician or not, in the performance of or arranging for a violation  
22 of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and  
23 Professions Code.

24 (e) Conviction of a crime involving fiscal dishonesty.

25 (f) Any crime or act involving the sale, gift, administration, or furnishing of  
26 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the  
27 Business and Professions Code.

28 13. California Code of Regulations, Title 16, section 2522 states:

When considering a) the denial of a license under Section 480 of the Business  
and Professions Code, b) the suspension or revocation of a license on the ground that  
a licensee has been convicted of a crime, or c) a petition for reinstatement of a license  
under Section 2787.7 of the Business and Professions Code, the Board in evaluating  
the rehabilitation of an individual and his or her present eligibility for a license, will  
consider the following criteria:

(1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

(2) Actual or potential harm to the public.

(3) Actual or potential harm to any patient.

- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.
- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the act(s) or offense(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.
- (13) Other rehabilitation evidence.

#### **COSTS**

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### **FIRST CAUSE FOR DISCIPLINE**

##### **(July 15, 2008 Criminal Conviction for Domestic Violence on July 8, 2008)**

15. Respondent has subjected his license to disciplinary action under sections 490 and 2878, subdivision (f) of the Code in that he was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed vocational nurse. The circumstances are as follows:

a. On or about July 15, 2008, in a criminal proceeding entitled *People of the State of California v. Todd Schei*, in San Diego County Superior Court, case number C282006DV, Respondent was convicted on his plea of guilty of violating Penal Code section 243, subdivision (e)(1), battery of a current or former significant other, a misdemeanor. The court stayed sentencing on additional counts of battery (Pen. Code, § 242), and resisting an officer

1 (Pen. Code, § 148(a)(1)), pursuant to the plea agreement.

2           b.       As a result of the conviction, on or about July 15, 2008, Respondent was  
3 granted three years summary probation, and sentenced to serve 353 days in a jail, perform 10  
4 days in the Public Service Work Program and pay fees, fines, and restitution, stayed pending  
5 successful completion of probation, which included requirements to attend and complete a 52-  
6 week Level II Integrated Domestic Violence/Substance Abuse Program, comply with a firearms  
7 prohibition, and comply with a protective order. After failing to appear at a probation hearing, a  
8 warrant was issued for Respondent's arrest. On September 25, 2009, a California Highway Patrol  
9 officer arrested Respondent after he was found walking alongside a freeway during rush hour  
10 traffic; he told the officer that he was running from some people. Respondent's probation was  
11 revoked on May 5, 2010, and a warrant was issued for his arrest. Probation was reinstated on  
12 June 4, 2010 on the same terms and conditions.

13           c.       The facts that led to the conviction are that on or about the evening of July  
14 8, 2008, a deputy with the San Diego County Sheriff's Department was dispatched to investigate  
15 a report of a family disturbance at the apartment Respondent shared with his girlfriend and their  
16 two teenaged children. The deputy spoke to the children and learned that Respondent had been  
17 involved in a heated argument with his girlfriend (S.W.). Both Respondent and S.W. had left the  
18 apartment separately. The deputy made contact with S.W. in the parking lot of a restaurant a few  
19 blocks away. She reported that she and Respondent got into an argument. Respondent was drunk  
20 and verbally abusive. The argument escalated and Respondent punched S.W. in the stomach with  
21 a clenched fist. S.W. moved to a sofa and Respondent followed her, threatening that he wanted to  
22 "clock" her in the face. S.W. called 9-1-1 because she was afraid of Respondent. The deputy  
23 escorted S.W. back to the apartment to retrieve some personal belongings. Respondent was  
24 sitting on the front porch and he immediately became hostile. Respondent told the deputy in a  
25 threatening tone that he worked at a prison and that he was a peace officer and that the deputy  
26 needed to leave. Respondent eventually admitted he was a nurse. When asked for his side of the  
27 story, Respondent told the deputy that nothing happened. The deputy advised Respondent that he  
28 was going to be arrested for battery. Respondent stood up, took a fighting stance, and made an

1 aggressive movement towards the deputy. Respondent continued to fight, and the deputy was  
2 forced to punch Respondent in the torso to gain compliance so that he could be hand-cuffed. The  
3 deputy reported that he could smell a strong odor of an alcoholic beverage on Respondent's  
4 breath. Respondent was transported to a sheriff substation for booking, where he was hand-  
5 cuffed to a bench in a prisoner holding room. Respondent began slamming his head against the  
6 wall behind him. After repeated orders to stop, Respondent continued to slam his head against  
7 the wall, screaming that he wanted to kill himself. Two deputies were required to subdue  
8 Respondent and he was placed in four-point restraints. Respondent was immediately taken to  
9 County Mental Health for an evaluation. While waiting to be cleared, Respondent told the deputy  
10 that if he ever saw the deputy on the street, he would go "psycho" on him. Respondent threatened  
11 that he would go looking for the deputy, wait until the deputy was in civilian clothes with no  
12 access to weapons, and Respondent would "do what [he's] got to do." Respondent told the  
13 deputies and the mental health evaluator that he was going to kill himself as soon as he was  
14 released. Respondent was transported back to jail and put in four-point restraints because there  
15 was no safety cell available. Based on jail policy, Respondent was required to be medically  
16 cleared, so he was taken to a nearby hospital. Respondent's behavior continued to escalate; he  
17 again became aggressive and had to be placed on a gurney with four-point restraints. Deputies  
18 were eventually able to return Respondent to jail.

## 19 **SECOND CAUSE FOR DISCIPLINE**

### 20 **(Dangerous Use of Alcohol)**

21 16. Respondent has subjected his license to disciplinary action under section 2878.5,  
22 subdivision (b) of the Code for unprofessional conduct in that on or about July 8, 2008,  
23 Respondent used alcohol and was under the influence of alcohol in a manner that was dangerous  
24 and injurious to himself and others, as described in paragraph 15, above.

### 25 **DISCIPLINARY CONSIDERATIONS**

26 17. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant  
27 to California Code of Regulations, Title 16, section 2522, Complainant alleges:

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1           a.     On or about May 18, 2000, in a prior criminal proceeding entitled *People of the*  
2     *State of California v. Todd Schei*, in San Diego County Superior Court, case number C203136,  
3     Respondent was convicted on his plea of guilty of violating Vehicle Code section 23152,  
4     subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more, a  
5     misdemeanor, on January 28, 2000. Respondent also pled guilty to driving on a license  
6     suspended for a prior DUI (Veh. Code, § 14601.2(a)). Respondent was sentenced to 30 days in  
7     jail, to be served on the work release program, and granted five years summary probation. On  
8     June 29, 2005, the court granted Respondent's petition. The conviction was set aside, a plea of  
9     not guilty was entered, and the case was dismissed pursuant to Penal Code section 1203.4.

10           b.     On or about May 18, 2000, in a prior criminal proceeding entitled *People of the*  
11     *State of California v. Todd Schei*, in San Diego County Superior Court, case number C202330,  
12     Respondent was convicted on his plea of guilty of violating Vehicle Code section 23152,  
13     subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more, a  
14     misdemeanor, on December 15, 1999. Respondent was sentenced to 30 days in jail, to be served  
15     on the work release program, and granted five years summary probation, to be served  
16     concurrently with the sentence imposed in case number C203136 in paragraph (a), above.

17           c.     On or about February 7, 1996, in a prior criminal proceeding entitled *People of*  
18     *the State of California v. Todd Schei*, in San Diego County Superior Court, case number  
19     C170759, Respondent was convicted on his plea of guilty of violating Vehicle Code section  
20     23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more,  
21     a misdemeanor.

22           d.     In a letter to Respondent dated January 19, 2005, an Enforcement Analyst from  
23     the Board advised Respondent that the Board was not going to deny Respondent's application for  
24     licensure at that time based on the fact that Respondent had complied with the terms of his  
25     probation. However, Respondent was warned that future substantiated reports of similar  
26     behavior, or other violations of the law or violations of regulations governing the practice of a  
27     vocational nurse, would result in disciplinary action against Respondent's license.

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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Vocational Nurse License Number VN 213354, issued to Todd James Schei;
2. Ordering Todd James Schei to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: **DEC 12 2012**



TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
*Complainant*

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